In the Supreme Court
OF THE
United States

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OCTOBER TERM, 1944

No. 1092

In the Matter of the Estate of
CARL A. LINDQUIST,
also called Carl Lindquist,
Deceased.

STATE OF CALIFORNIA,
Petitioner,
vs.
UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the Supreme Court of the State of California
and
BRIEF IN SUPPORT THEREOF.

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To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Petitioner, the State of California, respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of California, entered in the above case on December 30, 1944 (R. p. 40) and which became final on January 30, 1944. (R. p. 63.)

OPINIONS BELOW.

The opinion of the Supreme Court of California complained of is reported in 25 Advance California Reports, at pages 693 to 713, inclusive, 154 Pac. (2d) 879, and appears in the Record at page 40.

JURISDICTION.

The judgment of the Supreme Court of California was entered on December 30, 1944 (R. p. 40), and became final on January 30, 1944. (R. p. 63.) The jurisdiction of this Court is invoked under Section 237(b) of the Judicial Code, as amended by the Act of February 13, 1925 and the Act of January 31, 1928. (28 U.S.C. section 344(b).)

STATUTES INVOLVED.

The case involves a conflict between the escheat statute of the State of California, *Probate Code of California,* Sections 231, 1020 and 1027, printed in the appendix to this petition at pages ii-iv, and the escheat provisions contained in the *World War Veterans' Act,* 1924, as amended in 1935 (49 Stat. 607; 38 U.S.C. Section 450, sub. 3), printed in the appendix to this petition at pages i-ii.

The Tenth Amendment to the Constitution of the United States was relied upon by petitioner as prohibiting the enactment of a federal escheat law.

REASONS FOR THE EXERCISE OF THE DISCRETION OF THE COURT AND FOR THE ISSUANCE OF THE WRIT OF CERTIORARI.

Petitioner asserts that there are special and important reasons which should compel this Court, in the exercise of a sound judicial discretion, to issue a writ of certiorari—and that the compelling reasons are:

(1) The Supreme Court of California has decided a federal question, namely, that the Congress may pass an escheat statute (49 Stat. 607, 38 U.S.C. Section 450, sub. 3) which will control the distribution of the estate of a deceased person, the statutes of the state (Sections 231, 1020 and 1027, Probate Code of California) to the contrary notwithstanding;

(2) The said decision of the California Court is not in accord with applicable decisions of this Court; and

(3) Certiorari is requested in order that a settlement of an important question of public law may be had. This is a case of first impression in the United States. No Court, other than the Supreme Court of California in the decision here complained of, has construed the statutes involved. A case identical in all essential details is now pending before the Supreme Judicial Court of the Commonwealth of Massachusetts. (*Estate of John Konon, Deceased.*)

We are advised by the Veterans' Administration that similar cases are pending in a number of other jurisdictions, but none of these cases has been decided by an appellate tribunal.

SUMMARY STATEMENT OF THE MATTERS INVOLVED.

The deceased, Carl A. Lindquist, a Spanish American War Veteran, was awarded a pension of $60.00 per month by the Veterans' Administration, pursuant to the provisions of Title 38 U.S.C., Section 368. The Pacific National Bank, prior to the death of the deceased, had been appointed guardian of the estate of the deceased, and the pension was paid to it as said guardian. The money so received by the guardian was the money of the deceased absolutely and without any reservation of title or interest in the United States.

Upon the death of the veteran the Public Administrator commenced proceedings for the probate of the estate of the veteran and obtained possession of $1445.87 from the guardian of the veteran. All of said sum was money received from the United States by said guardian.

The Public Administrator rendered a final account and filed a petition for distribution of the estate of the deceased veteran, praying for an order determining who was entitled to the estate and for the distribution thereof to the persons entitled by law thereto.

The petition did not name any heirs, devisees, or legatees, and no person appeared to claim the estate.

Sections 231 and 1027 of the Probate Code of California provide that in the event no heirs appear to claim the estate of a decedent the same should be distributed to the State of California and deposited in the Treasury, and persons claiming an interest in said money may proceed at any time within five years to recover the same.

The United States of America claimed the residue of the estate under Section 450 of Title 38, U. S. C., which provides in part as follows:

> "* * * Provided further, That any funds in the hands of the guardian, curator, conservator, or person legally vested with the care of the beneficiary or his estate, derived from compensation, automatic or term insurance, emergency officers' retirement pay, or pension, payable under said Acts, *which under the law of the State wherein*

> *the beneficiary had his last legal residence would escheat to the State, shall escheat to the United States* and shall be returned by such guardian, curator, conservator, or person legally vested with the care of the beneficiary or his estate, or by the personal representation of the deceased beneficiary, less legal expenses of any administration necessary to determine that an escheat is in order, to the Veterans Administration, and shall be deposited to the credit of the current appropriations provided for payment of compensation, insurance or pension." (Emphasis supplied.)

The trial Court distributed the balance of the estate to the State of California under the escheat statute of this State. The Supreme Court of California reversed the decision of the trial Court and held that the balance of the estate should escheat to the United States of America.

ASSIGNMENT OF ERRORS.

The Supreme Court of California erred:

1. In holding that the federal statute (Section 450, 38 U.S.C.) providing for an escheat to the United States was constitutional;

2. In holding that a veteran is bound by contract, in the absence of heirs, to return to the federal government upon his death all unused portions of his pension money;

3. In holding that Subdivision 3 of Section 450, U.S.C., is a statutory contract rather than an escheat statute.

SUMMARY OF THE ARGUMENT.

I.

The assets of the estate of the deceased were at the time of his death vested in him absolutely.

II.

The money having been paid to the deceased without reservation, the United States can no longer assert control over it.

III.

A state, as distinguished from the United States, has, under the powers reserved to the states by the Tenth Amendment, sole and exclusive power and jurisdiction over the disposition of the property of its residents.

IV.

A consideration of the principal decisions relied on by the Supreme Court of California.

ARGUMENT.

I.

THE ASSETS OF THE ESTATE OF THE DECEASED WERE AT THE TIME OF HIS DEATH VESTED IN HIM ABSOLUTELY.

It has been held by the Supreme Court of the United States and by the Courts of several states that when money is paid to a veteran pursuant to a pension, title vests in the recipient and the United States has no right or interest in said money.

Spicer v. Smith, 288 U.S. 430, 77 L. Ed. 875;

Carrier v. Bryant, 306 U.S. 545, 83 L. Ed. 976;

U. S. Fidelity & Guaranty Co. v. Montgomery, 146 So. 528;

State, ex rel. Smith v. Board of Commissioners, 294 Pac. 915 (certiorari denied, 283 U.S. 855).

In *Spicer v. Smith,* supra, the Supreme Court of the United States speaking through Mr. Justice Butler stated that the very escheat provision of the federal statute was evidence that title to the money had passed to the veteran.

The fact that the money was paid to a guardian does not alter the situation. The intervention of a guardian does not leave the pension funds in the hands of the government but, when paid to the guardian, the title and possession have both passed from the government.

State, ex rel. Smith v. Board of Commissioners, 294 Pac. 915 (certiorari denied, 283 U.S. 855).

II.

THE MONEY HAVING BEEN PAID TO THE DECEASED WITHOUT RESERVATION, THE UNITED STATES CAN NO LONGER ASSERT CONTROL OVER IT.

This rule is best expressed by Judge Ebenezer R. Hoar, of the Supreme Judicial Court of Massachusetts, in the case of

Kellogg v. Waite, 12 Allen 529.

The pertinent portion of this decision reads as follows:

> "It is undoubtedly competent for the United States to attach such conditions as they may see fit to the grant of a pension, and to fix by law the time and manner in which the property shall finally pass to the pensioner. But when this money was paid to the agent of the principal defendant, by her consent, and in conformity with the existing provisions of law, *it became her property,* and created a debt from the agent to her, *over which the United States government had no longer any control or jurisdiction.* It was no longer, in the language of the statute of 1866, 'a sum of money due or to become due to any pensioner under the laws of the United States.' It had been paid, and was received by her in the manner she had chosen. *It could not be recalled by the government, nor could its disposal be qualified or in any manner limited or abridged.*" (Emphasis supplied.)

The pension money in the estate of the deceased had been his money. He had both title and possession and the money itself was within the jurisdiction of the California Courts and subject to its statutes.

III.

A STATE, AS DISTINGUISHED FROM THE UNITED STATES, HAS UNDER THE POWERS RESERVED TO THE STATES BY THE TENTH AMENDMENT SOLE AND EXCLUSIVE POWER AND JURISDICTION OVER THE DISPOSITION OF THE PROPERTY OF ITS RESIDENTS.

There are many authorities to the effect that the State has the sole and exclusive power over the disposition of property under its jurisdiction.

United States v. Fox, 94 U.S. 315;

Sunderland v. United States, 266 U.S. 226;
United States v. Perkins, 163 U.S. 625;
Beaver v. Short, 300 Fed. 113.

In the case of

Hamilton v. Brown, 161 U.S. 256,

the Supreme Court of the United States lays down the rule as follows (at p. 263):

> "By the law of England, before the Declaration of Independence, the lands of a man dying intestate and without lawful heirs reverted by escheat to the King as the sovereign lord; but the King's title was not complete without an actual entry upon the land, or judicial proceedings to ascertain the want of heirs and devisees. *Attorney General of Ontario v. Mercer,* 8 App. Cas. 767, 772, 2 Bl. Com. 245. The usual form of proceeding for this purpose was by an inquisition or inquest of office before a jury, which was had upon a commission out of the Court of Chancery, but was really a proceeding at common law; and, if it resulted in favor of the King, then, by virtue of ancient statutes, any one claiming title in the lands might, by leave of that court, file a traverse, in the nature of a plea or defence to the King's claim, and not in the nature of an original suit. Lord Somers, in *The Bankers' Case,* 14 Howell's State Trials, 1, 83; *Ex parte Webster,* 6 Ves. 809; *Ex parte Gwydir,* 4 Maddock, 281; *In re Parry,* L. R. 2 Eq. 95; *People v. Cutting,* 3 Johns. 1; *Briggs v. Light-Boats,* 11 Allen, 157, 172. The inquest of office was a proceeding *in rem;* when there was a proper office found for the King, that was notice to all persons who had claims to come in and assert them; and, until so traversed, it was conclusive in the King's favor. Bayley, J.,

in *Doe v. Redfern,* 12 East, 96, 103; 16 Vin. Ab. 86, pl. 1.

In this country, when the title to land fails for want of heirs and devisees, *it escheats to the State* as part of its common ownership, either by mere operation of law, or upon an inquest of office, *according to the law of the particular State.* 4 Kent Com. 424; 3 Wash. Real Prop. (4th Ed.) 47, 48." (Emphasis supplied.)

See also,

United States v. Repentigny, 72 U. S. 211.

Even money deposited in the United States Treasury when an escheat occurs escheats to the State where it was originally situated.

United States v. Klein, 303 U. S. 276;
American Loan & Trust Co. v. Grand Rivers Co., 159 Fed. 775.

Statutes providing for escheat have been held to be part of the intestate laws of a state.

Peo. v. Richardson, 269 Ill. 275, 109 N.E. 1033;
29 *Harvard Law Review,* 455.

This being the case it is all the more evident that there can be no federal escheat statute. Laws governing the devolution of property have always been the subject of exclusive state jurisdiction.

There is only one exception to the rule that a state has exclusive control over the devolution of title to property located within its jurisdiction. This exception tends to prove the general rule. The exception is in the case of the property of *restricted* Indians whose property is held in trust for them by the gov-

ernment. In the case of such property the courts have held that:

> "Restricted Indian lands do not become subject to the operation of the laws of the state until all restrictions from the right of the allottee to alienate have been removed and relinquished by the Congress."
>
> *Beaver v. Short,* 300 Fed. 113.

In the instant case, the veteran is not to be treated as a restricted Indian. There are no restrictions on his right to alienate his property and the government does not hold it in trust for him.

The fact that the money in the estate was derived from the United States does not change the general rule, i.e., that the state escheat statutes control property situated within the state.

Etheridge v. Doe, 18 Ala. 565.

By the Tenth Amendment to the Constitution of the United States all powers not delegated to the United States nor prohibited to the States are reserved to the States. By this reservation the rights of sovereignty are guaranteed to the States by the Constitution. No act of Congress can subtract an attribute of sovereignty from a State. Citation of authority is not necessary to demonstrate that probate jurisdiction over the property of a resident situated within a state has always been exercised by the states as an attribute of the sovereign.

IV.

A CONSIDERATION OF THE PRINCIPAL DECISIONS RELIED ON BY THE SUPREME COURT OF CALIFORNIA.

In support of its conclusion that the federal escheat statute will prevail over the state escheat statute, the Supreme Court of California relies in part on the case of *Tax Commission of Ohio v. Rife,* 119 Ohio State 83, 162 N. E. 390. This case involved the proceeds of a war risk insurance policy. Under the law and the contract, payments under the contract of insurance were not subject to inheritance taxes. The Court held that the beneficiaries named in the policy took under the contract and not by reason of the statutes of descent and distribution, and therefore the inheritance tax did not attach. In the instant case, however, the State of California is taking under its statutes of distribution and the United States is attempting to take the funds involved not by reason of any contractual relationship between the deceased and the government, or by virtue of any trust impressed upon the money, but by virtue of a statute of distribution which the Congress was powerless to enact. The Ohio case points this out in the following language:

> "This right to take this property is by virtue of a contract between the United States government and the soldier, and does not arise by a reason of the statutes of descent and distribution of this state, even though the government has seen fit to distribute such fund through the agency of an administrator acting under the statutes of descent and distribution of the State of Ohio."
>
> *Tax Commission of Ohio v. Rife,* supra.

Reliance is also placed upon the case of *Abbott v. Morgenthau,* 93 Fed. (2d) 242 (certiorari denied 303 U. S. 638). This is another case involving a contract between the government and the veteran. The veteran entered a soldiers' home. Upon entering the home the veteran agreed that " 'The balance due the pensioner at the date of his death shall be disposed of as directed by Act of Congress approved July 1, 1902.' " The statute was amended in 1910. The Court held that the 1910 amendment did not affect the contract and that as the claimant was not entitled to take under the 1902 statute, the balance of the pension money on deposit with the home should be paid into the federal treasury in accordance with the 1902 statute and the contract. There is *dicta* in the cited case to the effect that there is "no vested legal right to a pension at all, for, as has been said time and time again, pensions are bounties which Congress has the right to give, to withhold, to distribute, or to recall, at its discretion". We are not in conflict with this *dicta.* "To recall" a pension means to repeal the act so that the pension does not continue. We know of no case in which, in the absence of fraud, an attempt is made to recover title to pension money once the pensioner has taken title and possession of the same.

The statute relied on by appellant in the instant case does not attempt to distribute or recall the pension. What it does is to attempt to engraft an escheat statute on the substantive law of the State of California contrary to the state law and in violation of the Tenth Amendment to the Constitution.

Beaver v. Short, 300 Fed. 113, is likewise relied upon by the Supreme Court of California. This case provides the only exception to the rule that a state has exclusive control of the devolution of title to property located within its jurisdiction. This exception tends to prove the general rule. The cited case concerned the property of *restricted* Indians whose property was held *in trust* for them by the government. In case of such property the Court held that:

> "Restricted Indian lands do not become subject to the operation of the laws of the state until all restrictions from the right of the allottee to alienate have been removed and relinquished by the Congress."
>
> *Beaver v. Short,* supra.

In the instant case the veteran is not to be treated as a restricted Indian. The Congress has impressed no restrictions on his right to alienate his pension award and the government does not hold the same in trust for him. He can do as he pleases with the money—spend it, give it away, or throw it away.

The fact that the money in the estate was derived from the United States does not change the general rule, i.e., that the state escheat statutes control property situated within the state.

Etheridge v. Doe, 18 Ala. 565.

The Supreme Court of California, however, relies principally on the case of *United States v. Stevens,* 302 U. S. 623, 82 L. Ed. 484.

The cited case is analogous to the case at bar. The rationale of the decision supports the position of the

respondents in this case. In the *Stevens* case the veteran died an inmate of a federal veterans' home. By statute (24 U.S.C. 136) and as a prerequisite to admission to the home, inmates were required to turn over to the home all property which the inmate did not dispose of by will, and upon death the property was to vest in the board of managers of the home. The inmates were required to execute a written contract which embodied the statutory requirements. In the *Stevens* case such a contract was executed. Upon the death of a veteran inmate, the United States *sued* his administratrix for the proceeds of the estate. The Circuit Court of Appeals (89 Fed. (2d) 151) held that the statute and contract were in violation of the Tenth Amendment to the Constitution as an interference with the reserved rights of the state.

The Supreme Court in reversing the Circuit Court of Appeals stated:

> "This contract, however, is valid under the applicable state law * * *
>
> "During the life of the veteran, his property was his own to dispose of as he desired; * * *
>
> "In passing the Act of June, 1910, Congress merely directed the terms and conditions under which veterans, *consistently with state law,* can obtain admittance to Homes built, maintained and operated by the government for the benefit of veterans. Homes for the aged, needy, or infirm, in return for the benefits bestowed by them, generally receive some benefit from any property or estates of their members." (Emphasis supplied.)
>
> *U. S. v. Stevens,* supra.

The decision just cited is based upon the proposition that the veteran's property is his own, to be dealt with as he sees fit. If he chooses to become an inmate of a veterans' home, he does so by contract and the home succeeds to the veteran's property by virtue of a contract with the veteran made and enforced in accordance with the laws of the state.

CONCLUSION.

All of the important cases relied upon by the Supreme Court of California in arriving at its determination are cases based upon contracts between the veteran and the government, either insurance contracts or domiciliary contracts. In each of these cases the government took, not by virtue of an escheat law, but by reason of a contract with the veteran.

In the instant case the government attempts to take under an escheat statute. If the government is entitled to the money in question under a contract, it would have established its right in a plenary action by the filing of a claim and the institution of a suit. However, recognizing that its right is not based upon contract, it appeared in the probate proceeding and asked for distribution of the estate under the federal escheat law hereinbefore referred to.

The federal government should not prevail because escheat statutes are part of the laws providing for the devolution of title to property located within the jurisdiction of a state. Such laws are part of the sovereign

powers of a state, reserved to the state under the Tenth Amendment to the Constitution.

The writ of certiorari should be granted by this Court to the end that a correct decision on this important federal question may be had.

Dated, San Francisco, California,
February 26, 1945.

Respectfully submitted,

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(Appendix Follows.)